

### **REMARKS**

Claims 1-118 are all the claims pending in the application, claims 1, 2, 4, 46-52, 62, 64, 84-86, 91-93, 103, 105, and 112 having been elected for examination in response to a restriction requirement, and claims 3, 5-45, 53-61, 63, 65-83, 87-90, 94-102, 104, 106-111, and 113-118 having been withdrawn from consideration.

Claims 1, 2, 4, 46, 47, and 112 stand rejected under 35 U.S.C. §103(a) as being anticipated by Williams (5,691,490) in view of Aitken et al. (4,658,690). Claims 48-52, 62, 64, 84-86, 91-93, 103, and 105 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Williams and Aiken, and further in view of Tunura (5,585,588). Claims 84-86, 91-93, 103, and 105 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Williams, Aitken, Tunura and Norton (5,994,633). Claims 1, 2, 4, 46-52, 62, 64, 84-86, 91-93, 103, 105, and 112 stand rejected based on statutory-type double patenting over copending application Ser. No. 10/737,042. Applicant respectfully traverses these rejections, and requests reconsideration and allowance of the pending claims in view of the following arguments.

### **Rejection under 35 U.S.C. §103(a)**

Claims 1, 2, 4, 46, 47, and 112 stand rejected under 35 U.S.C. §103(a) as being anticipated by Williams in view of Aitken.

#### **Williams: Electrical signal by only one module**

Claim 1 is directed toward a customizable aggregated musical instrument and recites “a plurality of individual musical modules, wherein each musical module of said plurality of individual musical modules generates an electrical signal in response to user operation of said individual musical module.”

Page 2 of the Office Action indicated that stringed instrument 20 and keyboard 30 teach the claimed “plurality of individual musical modules.” Assuming *arguendo* that this is correct, claim 1 is distinguishable since each of instrument 20 and keyboard 30 do not generate an electrical signal in response to user operation as required by claim 1.

The Office Action relies upon the following passage of Williams for support for the rejection.

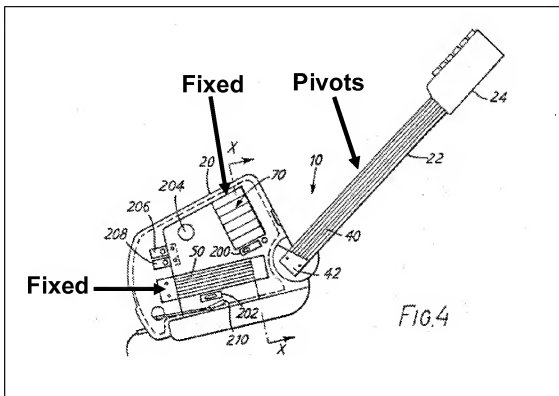
“It is to be further noted here that conventional electronics downstream of the pick-ups 28 are provided, viz., one or more synthesizers, MIDI's and computer(s) depending on the wishes of the musician/sound engineer, together, of course, with suitable amplifiers and speakers.” (Williams col. 4, lines 48-53).

Williams describes pick-ups 28 as being attached to stringed instrument 20. See Williams col. 2, lines 58-60. More importantly, Williams does not state that pick-ups 28 are used in conjunction with keyboard 50. Applicant assumes *arguendo* that instrument 20 can generate an electrical signal by virtue of pick-ups 28. Even if this were correct, Williams lacks any teaching with regard to keyboard 30 generating an electrical signal. One reason for this deficiency is that keyboard 30 does not have pick-ups 28. Williams therefore provides, at best, one musical module that generates an electrical signal. Consequently, Williams cannot teach or suggest that “wherein each musical module of said plurality of individual musical modules generates an electrical signal,” as required by claim 1.

#### **Aitken: no teaching or suggestion of a plurality of mounting locations**

Claim 1 further recites “a mounting frame securing said plurality of individual musical modules in a reconfigurable mounting arrangement, wherein each musical module of said plurality of individual musical modules is readily positionable within any of a plurality of mounting locations of said mounting frame.”

Pages 2 and 3 of the Office Action acknowledge that Williams does not teach the just-identified feature of claim 1, and instead relies upon the disclosure of the Aitken patent. In particular, the Office Action refers to neck 22, strings 40, strings 50, and keys 70, as disclosing a plurality of music modules. The Action further indicates that neck 22 is “readily positionable.” These elements relied upon by the Action are disclosed in Fig. 4 of the Aitken patent. For the convenience of the Examiner, Applicant provides below relevant portions of Fig. 4, which has been annotated by the Applicant.



As the forgoing Fig. 4 illustrates, strings 50 and keys 70 are in a fixed relationship with body 10 of instrument 10. See also Aitken col. 9, lines 62-63. Fig. 4 also shows that strings 40 can be pivoted relative to body 20. Applicant assumes *arguendo* that strings 40, strings 50, and keys 70 disclose a plurality of music modules, and that the pivoting of strings 40 discloses an individual musical modules that is readily positionable within any of a plurality of mounting locations of a mounting frame (the mounting frame being body 20).

Even if this were true, such an arrangement would at best disclose one musical module (strings 40) that is readily positionable within any of a plurality of mounting locations. The distinction is that claim 1 requires a plurality of musical modules that are readily positionable, such that the claim recites that “each musical module of said plurality of individual musical modules is readily positionable within any of a plurality of mounting locations of said mounting frame.”

Three points are established by the Aitken patent. One, Aitken simply discloses that one (strings 40), not a plurality, of musical modules is readily positionable.

Two, any suggestion provided by Aitken relates to only one musical module that is readily positionable within any of a plurality of mounting locations.

Three, Aitken actually suggests the opposite of what is recited in claim 1, which recites a plurality of musical modules that are readily positionable. Recall that Aitken discloses that strings 50 and keys 70 are in a fixed relationship with body 10 of instrument 10. This means that Aitken at best suggests: (1) one musical module that is readily positionable; and (2) that the remaining plurality of musical modules (strings 50 and keys 70) are fixed, and are therefore not readily positionable.

“A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. MPEP § 2141.02 (citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984) (emphasis in original). Further, “[t]he totality of the prior art must be considered, and proceeding contrary to accepted wisdom in the art is evidence of nonobviousness.” MPEP § 2145 (citing *In re Hedges*, 783 F.2d 1038, 228 USPQ 685 (Fed. Cir. 1986)).

Here, Aitken must be considered as a whole. Aitken undeniably discloses a plurality of musical modules (strings 50 and keys 70) that are fixed and not readily positionable. This teaching would therefore lead one of ordinary skill away from claim 1, which requires that the “plurality of individual musical modules is readily positionable within any of a plurality of mounting locations of said mounting frame.”

In summary, Applicant has demonstrated above that both Williams and Aitken do not teach at least one feature recited in claim 1. Therefore, for the reasons presented above, even if one skilled in the art were to combine the teachings of Williams and Aitken in the manner asserted, claim 1 would be patentable since not all of the recited claim elements are taught or reasonably suggested. Moreover, it was further demonstrated that when taken as a whole, Aitken would lead one away from the invention recited in claim 1. Independent claim 112 includes language similar to that of claim 1, and thus, is believed to be patentable for reasons similar to those discussed with regard to claim 1. The rejected dependent claims are believed to be patentable at least by virtue of their respective dependence on the patentable independent claims 1 and 112.

### **Rejection Under 35 U.S.C. §103(a)**

Dependent claims 48-52, 62, 64, 84-86, 91-93, 103, and 105 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Williams and Aiken in view of Tunura. Claims 84-86, 91-93, 103, and 105 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Williams in view of Aiken, Tunura and Norton. Applicant has demonstrated above that Williams and Aiken do not teach or suggest various features recited in claim 1. Therefore, for the reasons presented above, even if one skilled in the art were to combine the teachings of these references in the manner asserted, the identified dependent claims would be patentable at least by virtue of their dependency upon patentable independent claim 1.

### **Double patenting rejection**

Claims 1, 2, 4, 46-52, 62, 64, 84-86, 91-93, 103, 105, and 112 stand rejected based on statutory type double patenting over copending application Ser. No. 10/737,042. In particular, the Office Action referred to claims 1 and 13 of the '042 application as being the same invention as the identified claims of the present application.

Applicant respectfully disagrees and submits that the identified claims recite different claim elements. For instance, claim 1 of the present application recites:

“a plurality of individual musical modules,”

whereas claim 1 of the '042 application recites:

“a plurality of individual foot controller modules.”

Furthermore, claim 12 of the present application recites:

“means for securing” and “means for transmitting,”

whereas claim 1 of the '042 includes no such “means” language.

In view of the forgoing, it is believed that the claims of the applications at issue are not directed toward the same invention. Accordingly, withdrawal of the double patenting rejection is believed proper and is respectfully requested.

## CONCLUSION

In view of the above, Applicants submits that the currently pending claims are in condition for allowance. Early issuance of a Notice of Allowance is respectfully requested.

**Address all correspondence to:**  
FITCH, EVEN, TABIN & FLANNERY  
120 So. LaSalle Street, Ste. 1600  
Chicago, IL 60603

**Direct telephone inquiries to:**  
Jeffrey J. Lotspeich  
(858) 587-7652  
San Diego, California Office of  
FITCH, EVEN, TABIN & FLANNERY

Respectfully submitted,  
  
FITCH, EVEN, TABIN & FLANNERY

/Jeffrey J. Lotspeich/

---

Jeffrey J. Lotspeich  
Registration No. 45,737  
Attorney for Applicant

Date: March 18, 2008